

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 07F-2321-BOA

4 **THOMAS J. DOZIER,**
5 **Certified Residential Appraiser**
6 **No. 20359,**

ADMINISTRATIVE
LAW JUDGE DECISION

7 Respondent.

8
9 **HEARING:** November 6, 2007 at 9:00 a.m.

10 **APPEARANCES:** The Arizona State Board of Appraisal appeared through
11 Dawn Walton Lee, Esq., Assistant Attorney General; Respondent Thomas J. Dozier
12 appeared on his own behalf.

13 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

14
15 The parties presented evidence and made argument. Based on the entire
16 record, the Administrative Law Judge makes the following Findings of Fact,
17 Conclusions of Law, and Recommended Order to the Arizona State Board of Appraisal
18 ("the Board").

19 **FINDINGS OF FACT**

20 **BACKGROUND AND PROCEDURE**

21 1. Thomas J. Dozier has been a practicing appraiser for approximately 22 years
22 in Washington state and Arizona. The Board granted Mr. Dozier Certified Residential
23 Appraiser Certificate No. 20359 in 1986.

24 2. On January 16, 2007, the Board received a complaint against Mr. Dozier's
25 appraiser certificate from Mia Suchoski of Prescott West Realty. The gravamen of Ms.
26 Suchoski's complaint was that her asking price for a property at 325 N. Alma School
27 Rd. ("the subject property") in Mesa, Arizona was \$475,000 and that, after Mr. Dozier in
28 2005 appraised the property at \$391,000, the seller of the property was forced to
29 accept an offer in that amount, based on the purchaser's ability to obtain financing. Mr.
30 Dozier had performed a second appraisal of the property in 2006. Ms. Suchoski had
obtained a third appraisal from another licensed appraiser named Tom Loorz and,

1 based on that appraisal, demanded that Board or Mr. Dozier pay her the difference
2 between her asking price and Mr. Dozier's first appraised value of \$84,000. Ms.
3 Suchoski also noted that the property was commercial and that, by performing the
4 appraisal, Mr. Dozier had practiced beyond the scope of his residential certificate.¹

5 3. The Board forwarded the complaint to Mr. Dozier. On March 28, 2007, the
6 Board received Mr. Dozier's 7-page, single-spaced, typewritten response. Mr. Dozier
7 generally attacked Ms. Suchoski's motivation and credentials and noted that she was
8 not the intended user of his appraisal reports. With respect to Mr. Loorz's report, Mr.
9 Dozier noted that Mr. Loorz was from Prescott, like Ms. Suchoski, and that there were
10 over 400 Arizona General Appraisers in Maricopa County. He also pointed out that Ms.
11 Suchoski "could have attained a second or third objective opinion of market value for
12 the property in question by one of the over 400 Arizona General Appraisers in Maricopa
13 County, or one of the more than 40 Arizona General Appraisers in the city of Mesa,
14 AZ."²

15 4. The Board appointed contract investigator Roy E. Morris, III, Certified
16 General Appraiser Certificate No. 30029 to investigate Ms. Suchoski's complaint. On
17 May 4, 2007, the Board received Mr. Morris' investigative report, which concluded that
18 Mr. Dozier had violated certain Arizona statutes and regulations governing residential
19 certificated appraisers in preparing two appraisals of the subject property, one on April
20 12, 2005 and the other on August 25, 2006.³

21 5. The Board referred the matter to the Office of Administrative Hearings for the
22 scheduling of a hearing in due course.

23 6. On September 25, 2007, the Board issued a Complaint and Notice of Public
24 Hearing, which charged Mr. Dozier with violations of A.R.S. §§ 32-3612(A)(2), 32-
25 3631(A)(6), (7), and (8), and 32-3635, and A.A.C. R4-46-401. The Board also charged
26 Mr. Dozier, in his preparation of the April 12, 2005 report, with violations of the 2005
27 edition of the Uniform Standards of Appraisal Practice ("2005 USPAP") Rules 1-1(a), 1-
28 3(h), 1-4(c), 2-1(a), 2-2, 2-2(iii), 2-2(ix), and 2-2(x); and, in his preparation of the August

29 ¹ See Board Ex. 1.

30 ² See Board Ex. 2.

³ See Board Ex. 3. Mr. Morris' opinions are set forth *infra*.

1 25, 2006 report, with violations of the 2006 edition of USPAP ("2006 USPAP")
2 Standards Rules 1-1(a), Ethics Rule, Record Keeping, the Departure Rule, and
3 Statement on Standard 10 for federally related transactions, 1-1, 1-2(h), 1-3(a) and 1-
4 3(b), 1-3(f), 1-4(b) and 1-4(c), 2-1(a), 2-2(vii), 2-2(viii), 2-2(ix), 2-2(x), and 2-2(xi).

5 7. A hearing was held on November 6, 2007 at 9:00 a.m. The Board presented
6 the testimony of Mr. Morris and had admitted into evidence six exhibits, including the
7 two appraisals at issue. Mr. Dozier testified on his own behalf, presented the testimony
8 of Joel McDaniel, the intended user of the 2005 appraisal, and his secretary Michelle
9 Amelonke, whom he was also mentoring in appraisal practices, and had admitted into
10 evidence four exhibits.

11 HEARING EVIDENCE

12 The Board's Investigator Mr. Morris

13 8. Mr. Morris has been a certified general appraiser since 1991, when the Board
14 first started licensing appraisers. He has been appraising properties for 37 years and
15 teaches USPAP at Arizona State University and elsewhere. USPAP is a nationally
16 recognized code of conduct for appraisers, which has been adopted in other countries
17 as well. Mr. Morris reviewed the complaint, Mr. Dozier's response, the two appraisal
18 reports, and Mr. Dozier's file.

19 9. As part of his assignment, Mr. Morris signed a certification that, among other
20 things, he had no interest in the subject property and no bias with respect to any of the
21 parties involved in the investigation.

22 10. Mr. Morris applied 2005 USPAP to evaluate Mr. Dozier's April 12, 2005
23 appraisal report and applied the 2006 USPAP to evaluate Mr. Dozier's August 25, 2006
24 appraisal report of the subject property.

25 11. Mr. Morris performed research and analysis on Mr. Dozier's appraisal
26 reports to determine the factual matters that he relied upon. Mr. Morris also conducted
27 a field inspection of the exteriors of the subject property and the comparable sales cited
28 in the appraisal reports.

29 12. Mr. Morris testified that the subject property is being used as a child care
30 facility, which is a commercial retail classification. Child care facilities are licensed by
the state according to the age of the children cared for, whether they are infants,

1 toddlers, or pre-school. All three classifications have different requirements as to the
2 number of caregivers and physical characteristics of the facility. Children from different
3 classifications cannot be mixed in the same area of a facility.

4 13. Mr. Morris testified that Mr. Dozier's references to General Appraisers in his
5 response acknowledges that appraisal of the subject property was beyond the scope of
6 his residential appraiser certificate.

7 **April 12, 2005 Appraisal Report**

8 14. Mr. Morris noted that the 2005 report was prepared for Applewood Funding.
9 Although Applewood Funding is a private lender, it probably would sell the loan on the
10 property to another lender, which likely would have been a member of the FDIC.

11 15. The report indicated that it was a "limited use restricted narrative appraisal
12 report." This description was meaningless and in violation of USPAP Standards Rule
13 2.2.

14 16. The transmittal letter and report states numerous times that the report did
15 not comply with the guidelines of the Federal National Mortgage Association ("FNMA" or
16 "Fannie Mae"). The FNMA guidelines only apply to residential properties; because the
17 subject property was commercial, Mr. Dozier's repeated references to FNMA were
18 misleading.

19 17. Mr. Dozier's comments to his report stated that there were no sales of
20 similar properties, i.e., child care facilities, in the past 12 months. Mr. Morris found this
21 statement to be factually incorrect.

22 18. Another comment referred to "available sales histories of similar
23 commercial properties." Mr. Morris testified that similar commercial properties would
24 have been other childcare facilities, not he purported comparable sales referenced in
25 Mr. Dozier's appraisal report.

26 19. Another comment referred the subject's and comparables' lack of "premium
27 considerations for such items such as view, golf course, or other exterior amenities . . .
28 ." None of these amenities would affect the value of a childcare facility.

29 20. Mr. Dozier also commented he had considered the subject properties'
30 "additional privacy, room for storage, etc." due to its relatively larger site. Mr. Morris
testified that these considerations were not relevant to an appraisal of a daycare facility.

1 21. Mr. Morris testified that the report's assertion that certain properties were
2 comparable was in error. The purported comparable sales included an industrial use
3 property, with a two-story building on site, a historic 8-suite office building, and a liquor
4 store. Although the report stated that the industrial use property had 1918 square feet
5 and was built in 1920, that was not what Mr. Morris found on site. The subject property
6 was built in 1968 and was in no way comparable to a historic office complex. Finally,
7 although the liquor store was in close proximity, it had substantial equipment and
8 fixtures that would not comparable to the equipment and fixtures that a child care facility
9 would need. Mr. Dozier's use of these sales as comparables was misleading.

10 22. Mr. Dozier's report included a Multi Purpose FIRREA⁴ Addendum. Mr.
11 Morris testified this inclusion was inappropriate, because the addendum was for
12 residential, not commercial, properties.

13 23. Mr. Morris testified that, if the report had been a limited use appraisal
14 report, Mr. Dozier was required to document the limited use to the intended use, with a
15 justification for the limitation, and include sufficient information to allow the report to be
16 understood by another appraiser. Mr. Dozier had not done either of these things.

17 24. Mr. Morris testified that the subject property was being leased by a tenant
18 for use as a daycare facility. But the report contained no income or "highest and best
19 use" analyses if the property had been vacant, which would have been appropriate
20 under the circumstances.

21 25. Mr. Morris concluded:

22 The respondent is a certified residential appraiser, and as
23 such does not meet the qualifications criteria to appraise
24 commercial properties in Arizona.

25 There was a violation of Standard Rule 2-2, which requires a
26 prominently stated option as to type of report. If the report
27 was a limited use, then the Departure rule was violated. In
28 any case, the report's description and/or labeling is
29 misleading.

30 The report repeatedly states that the report does not comply
 with FNMA Guidelines, but fails to state or describe the

⁴ Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.

1 appraisal procedures followed and the reasoning that
2 supports the analysis, opinions, and conclusions made
3 under Standard Rule 2-2(ix) and Standard Rule 2-2(iii),
4 physical and economic characteristics.

5 The subject property was and is a commercial property
6 which was leased or rented. Standard Rule 1-4(c), the
7 Income Approach is applicable, and would go to Standard
8 Rule 2-2(ix), appraisal procedures and reasoning that
9 supports.

10 There was a violation of Standard Rule 1-3(h) and Standard
11 Rule 2-2(x) as the report or workfile contained no highest
12 and best use analysis or statement.

13 In conclusion, under Standard 1 and Standard 2, the
14 appraisal and report dated April 12, 2005 to Applewood
15 Funding is not credible under Standard 1 and is misleading
16 under Standard 2.

17 **August 25, 2006 Appraisal Report**

18 26. The 2006 report was prepared for Towanda Carrigan/M & I Bank. M & I
19 Bank is a member of the FDIC.

20 27. Although Mr. Dozier described the 2006 report as a "Limited Use Restricted
21 Narrative Appraisal Report," under the standards, Mr. Morris testified that, when a
22 financial institution is the user and lending is the use, the report must be to a summary
23 level under USPAP Statement 10. Mr. Dozier's report did not meet any of the federal
24 requirements.

25 28. Mr. Dozier had a file only for the 2005 report, not for the 2006 report. There
26 also was no signed certification for the 2006 report.

27 29. The subject property included residentially zoned parcels which Mr. Dozier's
28 report noted the owner was in the process of rezoning. But the report did not include
29 any clear and conspicuous hypothetical assumption statement, which would be
30 necessary if Mr. Dozier was assuming that commercial use would be legally allowed on
the residential parcels.

30 30. The report referred to "paved parking." Mr. Morris testified that, in fact,
most of the parking was in a fenced area covered with gravel.

1 31. The report referred to the subject's "livable area" as approximately 2,169
2 square feet. This reference was in error because the subject was commercial and had
3 no livable area. The subject had only occupancy area for its intended use, which at
4 present was a daycare facility, such as rooms sufficient to separate the three classes of
5 children.

6 32. The report stated that "[a]ny possible or actual specific-use fixtures have not
7 been given any consideration in complet[ing] this restricted-appraisal report." Mr.
8 Morris testified that the statement was incomprehensible.

9 33. The report also stated that on-street parking was available to supplement
10 on-site parking. Mr. Morris testified that the statement was false, because no parking
11 was allowed on Alma School Rd. where the subject was located.

12 34. The comparable sales in the August 2006 report were a community center,
13 a gym, an auto repair facility, a multi-story/multi-tenant office building, a retail pad in a
14 shopping center, and a private school with extensive parking. Mr. Morris testified that
15 none of these properties were comparable to the subject.

16 35. Mr. Morris testified that USPAP requires an appraiser to use comments to
17 explain in why he did not use an approach contemplated by USPAP, so that the
18 absence of the approach does not undermine the credibility of the report. Mr. Dozier's
19 comments were nonsensical and would not have been useful to a peer in
20 understanding the report.

21 36. The report cited the 2005 USPAP definition of market value, which was an
22 error since the 2006 USPAP governed the report. Mr. Morris testified that, if the
23 legislature has not defined "market value," the judicial construction should be used
24 under the case of *Mandl v. City of Phoenix*.⁵

25 37. The report contained no "highest and best use" analysis, no cost approach
26 or income approach to valuation, which Mr. Morris would expect to see in a commercial
27 building that was leased or rented.

28 38. Mr. Morris' report concluded as to the August 2006 report:
29
30

⁵ 41 Ariz. 351, 18 P.2d 271 (1933).

1 The respondent is a certified residential appraiser, and as
2 such does not meet the Arizona Appraisal Board's
3 qualifications criteria to appraise the subject.

4 There is a violation of the Ethic Rule, Recordkeeping
5 section, as there was no workfile or copy of the second
6 report with a signed and dated certification.

7 There was a violation of the Departure rule and Statement
8 on Standard 10 for federally related transactions.

9 There were violations to Standard Rule 1-1, failure to use
10 recognized methods and techniques, errors of omission and
11 commission, and due diligence and due care. These go to
12 Standard Rule 2-2(ix). Failure to label hypothetical condition
13 as required under Standard Rule 1-2(h) and Standard Rule
14 2-2(vii). Violation of highest and best use under Standard
15 Rule 1-3(a) and (b), and Standard Rule 2-2(x).

16 Violation as to failure to support the exclusion of other
17 approaches to value under Standard Rule 1-4(b) and (c)
18 also Standard Rule 1-3(f) for sound reasons to exclude any
19 information or procedure that would appear relevant.

20 Failure to support exclusion of approaches for a licensed
21 facility that was leased prior to sale also goes to Standard
22 Rule 2-2(vii) scope, and (xi) reason for excluding any of the
23 usual valuation approaches.

24 Under Standard 1, the appraisal is not credible and under
25 Standard 2, the report is misleading.

26 39. Mr. Morris provided the following other information, observations, and
27 conclusions as to both reports:

28 The reports were cobbled together from format rather than
29 narrative, too-short and poorly constructed paragraphs, and
30 inadequate appraisals. This is a strong indication that the
respondent is being misleading on purpose in an attempt to
avoid responsibility for an improper scope of work.

Mr. Dozier

40. Mr. Dozier did not dispute any of Mr. Morris' conclusions or that he had
violated the statutes, rules, and USPAP standards charged.

1 41. Mr. Dozier testified that he had never meant to break the law. He had been
2 asked to do the appraisal by a long-time client, Applewood Funding, which was a lender
3 that is not a member of the FDIC. He had called the Board and asked if he could
4 appraise the commercial property. He had been told to look at the statutes, which led
5 him to believe that, if no federal money was involved, he could appraise a commercial
6 property. He argued that the USPAP appeared to countermand the statutory language.

7 42. Mr. Dozier testified that no one had lost any money as a result of the two
8 appraisal reports. Much of the information was communicated to the lender by
9 telephone. He spoke to Applewood Funding's representative several times a day by
10 telephone and even met the representative on site to inspect the subject and
11 comparable sales.

12 43. Mr. Dozier testified that, before the subject had become a daycare facility, it
13 had housed an insurance agency's office. The building itself was not designed for a
14 specific use. His problem was that he had been more concerned with communicating
15 with the intended user than putting the reports in a form that would allow another
16 appraiser to understand them.

17 44. Mr. Dozier testified that, in the past, the Board had brought a case against
18 him based on his appraisal of another commercial property. But the Board had
19 dropped the case. Mr. Dozier testified he had no notice that he had exceeded the
20 scope of his certificate in this case until he received the Board's complaint. As soon as
21 he did, he canceled all pending contracts for appraisal of commercial properties.

22 45. Mr. Dozier only accepts clients through referrals. If a client is not 100%
23 satisfied, he refunds the cost of the appraisal. It is cheaper to refund the money than to
24 defend a complaint against his certificate.

25 46. Mr. Dozier testified that he works 60-70 hours/week doing appraisals. Most
26 of his business concerns residential appraisals. He has taken classes from Mr. Morris.
27 Over the years, he has performed a few appraisals of commercial properties. If the
28 property is complex, he refers the appraisal to Jerry Huish, who has agreed to mentor
29 Mr. Dozier so that he can get a general certificate.

30 47. Mr. Dozier had admitted into evidence the following letters of reference from
long-term clients:

1 47.1 Myron L. Snow, the President and owner of MBS Financial, wrote that he
2 has been using Mr. Dozier's appraisal services for over 15 years. Mr. Snow has always
3 found Mr. Dozier's appraisals to be "fully researched in justifying his conclusions to
4 lenders." When Mr. Snow first started in the mortgage business 35 years ago, he did
5 not sell loans, which became his "personal responsibility" if they went into default. Now
6 that originating and selling a single home loan involves so many people, departments,
7 and companies, "[i]t is unfortunate the concern is now is not to make a good loan, but to
8 be creative enough at each step of the process to pass guidelines and get paid for the
9 volume." Mr. Snow considers Mr. Dozier to be "one of the few responsible
10 professionals involved in this industry who still believes an appraiser's purpose is to
11 provide a fair valuation of the property."

12 47.2 Mr. Dozier testified that he has performed appraisals for Rebecca Roberts
13 of Cougar Mortgage for more than ten years. Ms. Roberts gave Mr. Dozier her "highest
14 recommendation as his appraisal work is nearly flawless." Lenders were generally
15 happy with Mr. Dozier's work. Mr. Dozier's "appraisals are never below fair market
16 value as is the case many times with lazy appraisers. [His] thorough research would
17 never allow for property appraised under fair market value." As a mortgage broker, Ms.
18 Roberts cannot have appraisers undervalue properties "because this would lead to me
19 losing many transactions both purchase and refinance." She also "cannot afford to
20 work with appraisers who 'stretch values' as this would mess up transactions and
21 damage my lender/underwriter relationships which I have worked for years to develop."

22 47.3 Jeff Takoushian of Applewood Funding stated that Applewood hired Mr.
23 Dozier to appraise the property at 325 N. Alma School. Mr. Takoushian stated:

24 I discussed the assignment at length with Mr. Dozier prior to
25 his acceptance of the assignment to insure that he and I
26 were in agreement that he was competent and capable of
27 completing the assignment under my conditions and
28 direction. Each assignment I give to Mr. Dozier is discussed
29 prior to his acceptance of the assignment and Mr. Dozier
30 has demonstrated an excellent record of capability and
competency to complete the assignments that he has
accepted from my company for approximately the past 13
years. On the occasion that the potential assignment is too
complex for Mr. Dozier to complete, he has always declined

1 the assignment and referred me to a Certified General
2 Appraiser for completion.

3 I personally inspected the subject property and viewed the
4 comparable sales and concluded that the report prepared for
5 me by Mr. Dozier was acceptable to me as the intended
6 user. The report was prepared and completed in exact
7 compliance with my direction and met my expectations and
8 direction, as is every appraisal assignment completed by Mr.
9 Dozier for my company.

10 As a private equity lender, I do not consider such items as
11 licenses, fixtures, inventory and other non-realty items
12 associated with a given property. Therefore as the intended
13 user of the appraisal reports, I instruct Mr. Dozier to exclude
14 those items as well as any considerations for income
15 streams and cost approach methods to value.

16 I lend private funds exclusively on the equity of the real
17 estate as a building and improved land, and instruct Mr.
18 Dozier to complete appraisal reports under those conditions,
19 without consideration to non-realty items and other methods
20 of value which I do not consider or use in determining a loan
21 amount for my clients.

22 48. Mr. Dozier testified that he would do "whatever it takes" to keep his license.
23 Before Ms. Suchoski, no one had ever made a complaint against any appraisal he
24 performed.

25 49. Although Mr. Dozier testified that he knew that he had a residential
26 certificate, he testified he did not know that he could not appraise a commercial
27 property, especially if no federally guaranteed funding were involved.

28 **Mr. McDaniel**

29 50. Mr. McDaniel testified that Applewood Funding was not a federally
30 chartered lender. Mr. Dozier has performed appraisals for Applewood Funding for
approximately 13 years. He has always provided "good fair market values."

51. Mr. McDaniel testified that he passes the subject property twice a day, on
his way to and from work. He thought that Mr. Dozier's appraisal report provided a
"good value" and Applewood Funding made the loan. He thought that the report was
credible.

52. Mr. McDaniel testified that, in his opinion, the subject property as “multiple use,” in that it could be used for many different purposes with very little modification. It could be a day care facility, insurance office, or restaurant. Applewood Funding was not looking at the value of the business but the value of the land and the building.

53. Mr. McDaniel testified that he had told Mr. Dozier not to prepare an income stream or highest and best use analysis. He knew that the appraisal report was restricted use, based on his instructions to Mr. Dozier. Many of his instructions to Mr. Dozier had been oral. Mr. McDaniel was not interested in the childcare business because the tenant could move out.

54. Mr. McDaniel was satisfied with Mr. Dozier's appraisal report of the subject property and did not find it misleading. He recommends Mr. Dozier's work to others. He finds Mr. Dozier's character and work product to be acceptable.

55. Over the 13 years of their association, Mr. McDaniel has referred between 200 and 300 residential appraisal assignments to Mr. Dozier. He has made four or five assignments to Mr. Dozier for appraisals of commercial buildings. He was only looking for a “fair, honest appraisal” and what he wanted was separate from any compliance with USPAP.

56. Mr. McDaniel testified that, when Applewood Funding sells or markets loans it has originated, he may show other lenders appraisals. These lenders may be FDIC insured.

Ms. Amelonke

57. Ms. Amelonke met Mr. Dozier through a mutual friend. She started working as his secretary on October 1, 2005. She has since decided that she wants to build a business of her own as an appraiser. She went back to school and, although she never did well in school, has received at least 90% on tests, with Mr. Dozier's help and support. Since Ms. Amelonke finished classes in September 2007, she has started going with him on appraisal assignments.

58. Ms. Amelonke testified that Mr. Dozier is one of the most honest and principled people she has ever known. She does not believe that he ever would have done anything he knew that he could not do. He turns away potential clients if he thinks that he cannot ethically perform the work they require.

CONCLUSIONS OF LAW

1. The Board bears the burden of proof and must establish that Mr. Dozier violated applicable standards, as adopted by statute and regulation, by a preponderance of the evidence.⁶ “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁷ A preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁸

2. The Arizona legislature created the Board to prescribe and enforce standards of professional appraisal practice.⁹ The Arizona legislature charged the Board with investigating complaints against licensed appraisers and, if violations of applicable statute, regulation, or standard are established, disciplining appraisers’ certification.¹⁰

3. Licensed and certificated appraisers’ appraisals in Arizona must comply with USPAP.¹¹

4. Members of a regulated profession are presumed to know the law and will be bound by the requirements set forth in statutes that have been enacted to regulate their profession or in regulations promulgated pursuant to those statutes.¹²

5. A.R.S. § 32-3612(A)(2) allowed a certified residential appraiser like Mr. Dozier only to appraise “one to four residential units without regard to value or complexity.” A.R.S. § 32-3612(B) and (C) did not expand the permissible scope of Mr. Dozier’s certified residential appraisal practice but, instead, limited the scope of an exempt

⁶ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁷ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁸ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁹ A.R.S. § 32-3605(A)(1).

¹⁰ A.R.S. § 32-3631(A)(2) and (6); see also A.A.C. R4-46-301 and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

¹¹ A.A.C. R4-46-401.

¹² See *State v. Soltero*, 403 Ariz. Adv. Rep. 8, ¶ 7, 71 P.3d 370, ¶ 7 (App. 2003) (“Enactment of statutes and promulgation of regulations, where there is no defect in the legislative process, provide all the notice that is due.” (quoting *Johnson v. Iowa Dept. of Human Services*, 932 F.2d 1247, 1249-50 (8th Cir. 1991)).

1 person's or a licensed appraiser's practice depending on whether the transaction was
2 "federally related."

3 6. Neither A.R.S. § 32-3612(A) nor any of the other charged statutes and USPAP
4 rules require intentional misconduct. Even so, Mr. Dozier's interpretation of A.R.S. § 32-
5 2612 is no more than self-serving wishful thinking. The Board therefore has established
6 that, in performing the two appraisals of the subject property, Mr. Dozier exceed the
7 scope of his certified residential certificate, in violation of A.R.S. § 32-3612(A)(2).

8 7. Mr. Dozier's and Mr. McDaniel's testimony and Mr. Dozier's other long-term
9 clients' testimonials assumed that the credibility of an appraisal report depended solely on
10 whether the final property value assigned met the lender/client's opinion of
11 reasonableness, which was never defined in this record. Instead, the credibility of a
12 valuation depends on the steps that the appraiser took to reach the valuation and whether
13 the appraisal report complied with the industry-wide standards that the appraisal
14 profession has codified, and the Board has adopted, in USPAP.

15 8. Mr. Dozier did not dispute any of the charged violations. The Board therefore
16 has established that Mr. Dozier violated the statutes, regulations, and USPAP provisions
17 charged in the Complaint and Notice of Hearing.¹³

18 9. Applewood Funding's employees' alleged understanding and approval of the
19 April 12, 2005 appraisal report does not vitiate Mr. Dozier's violation of the charged
20 statutes and USPAP rules because, as noted above, applicable criteria are objective, or
21 at least capable of being understood by a qualified appraiser, not based on the intended
22 user's subjective response.

23 10. Mr. Dozier's proven violations of applicable statutes, regulations, and USPAP
24 are numerous and severe. But the record does not show any other discipline or even
25 complaints against his certificate during the more than 20 years since he received his
26 certificate. Mr. Dozier's disciplinary history is a factor that should be considered in
27 mitigation of any penalty that is assessed for his proven violations in this matter.

28 11. By his own admission, during his career, Mr. Dozier has prepared a handful of
29 appraisal reports for commercial properties, despite the statutory requirement of a general

30 ¹³ These violations are set forth in Appendix A to this recommended decision.

1 appraiser's certificate and his own professional lack of competence to perform such
2 appraisals, which was demonstrated at the hearing of this matter. But the vast majority of
3 appraisal reports that Mr. Dozier has prepared during the more than twenty years since
4 he received his residential appraiser certificate have been residential and the record does
5 not show any deficiencies or violations in those residential appraisal reports.

6 **RECOMMENDED ORDER**

7 Based on the foregoing, it is recommended that the Board issue the following
8 order against Mr. Dozier's Certified Residential Appraiser Certificate No. 20359:

9 1. Commencing on the date of the Board's decision in this matter, Mr. Dozier
10 shall be placed on probation for one year, actively working for under the supervision of
11 an Arizona Certified Residential Appraiser, approved by the Board. During the
12 probationary period, Mr. Dozier's supervising appraiser must review and sign under
13 USPAP Standards Rule 3-3 every appraisal that Mr. Dozier performs.

14 2. Mr. Dozier is required to provide the Board with every appraisal that he
15 performs during the supervised probationary period.

16 3. Within that probationary period, Mr. Dozier will be required to complete at
17 least 60 hours of qualifying education courses for a Certified General Residential
18 Appraiser, including two qualifying education courses (at least 15 hours each with
19 exam). This course work is in addition to any continuing education required for Mr.
20 Dozier to maintain his appraiser certification. If the courses are not completed during
21 one year, Mr. Dozier's license shall remain on suspension until they are.

22 4. If after six months of the supervision, on Mr. Dozier's motion, the Board
23 determines that Mr. Dozier sufficiently improved his competency to warrant a more
24 independent practice, the Board may lift the terms of supervision to allow Mr. Dozier to
25 complete the remainder of his probationary unsupervised.

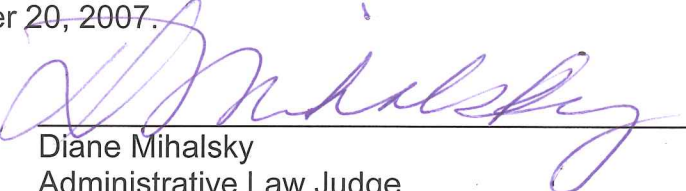
26 5. If Mr. Dozier is allowed unsupervised probation, he shall file a monthly
27 appraisal log, by the fifteenth day the month following the month logged, listing every
28 Arizona appraisal which he has completed within the prior calendar month by property
29 address, appraisal type, valuation date. The monthly log report may be filed by mail.

30 6. Mr. Dozier shall comply with Arizona statute and the Uniform Standards of
Professional Appraisal Practice in performing all appraisals.

1 7. If Mr. Dozier does not comply with the terms of his probation, his certificate
2 no. 20359 shall be revoked. If Mr. Dozier successfully completes probation, the
3 Board's order in this matter may be considered as a factor in aggravation of the penalty
4 to be imposed for any statutory violations that the Board in the future establishes based
5 on conduct occurring after Mr. Dozier's successful completion of probation.

6 8. Mr. Dozier shall bear all costs associated by his probation, including the cost
7 of the reviewing appraiser.

8 Done this day, November 20, 2007.

9
10 
11 Diane Mihalsky
Administrative Law Judge

12 Original transmitted by mail this
13 21 day of November, 2007, to:

14 Arizona State Board of Appraisal
15 Deborah G. Pearson, Executive Director
16 1400 West Washington, Suite 360
Phoenix, AZ 85007

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